

INITIAL STATEMENT OF REASONS

PROBLEM, REQUIREMENT OR OTHER CONDITION ADDRESSED

This rulemaking proposes to amend sections 15110 and 15240 of Title 27, California Code of Regulations (CCR). The proposed amendments to the regulations would define the term "service charge" so that it may be equivalent to, or used interchangeably with the term "surcharge," which is already established in statutes and regulations. Also, because emergency regulations will expire, this rulemaking allows the State surcharge to continue to fund the necessary and reasonable costs of all State agencies responsible for implementing and enforcing the requirements of the Unified Program; and allows the surcharge (service charge) to continue to be established no more than once per year and become effective 60 days after being published in the California Regulatory Notice Register (Z-Register).

General Statement of Reasons

The proposed regulations will provide the Secretary of the California Environmental Protection Agency (Secretary) with appropriate authority to expend the State surcharge funds to cover the necessary and reasonable costs of all State agencies carrying out their responsibilities under the Unified Program, rather than allowing surcharge funds to be spent on specific Unified Program agencies and activities. They will also clarify the collection process for the State surcharge which will then allow the Certified Unified Program Agencies (CUPAs) to collect one State surcharge rather than a tentative (preliminary) and a final State surcharge from regulated persons (businesses) under the Unified Program. This rulemaking will allow the Secretary to revise the State surcharge if necessary, but no more than once per year.

This rulemaking will also require the Secretary to publish proposed revisions to the surcharge in the Z-Register and accept comments for 30 days. After receiving comments, the Secretary may, if necessary, make any additional changes to the State surcharge which will then be published in the Z-Register as the final State surcharge. The final State surcharge will become effective 60 days after it is published in the Z-Register. The proposed regulations will affect both the Secretary and the CUPAs' responsibilities regarding the State surcharge.

Secretary's Responsibilities Regarding the State Surcharge:

Because the Unified Program single fee system includes an assessment on each person

(business) regulated by the Unified Program of a State surcharge, the Secretary is required to annually determine the State surcharge. Thus, the Secretary is responsible for adjusting the amount of the State surcharge to be collected by different CUPAs to reflect the different costs incurred by affected State agencies. Because Assembly Bill (AB) 2872 (Chapter 144, Statutes of 2000), Health and Safety Code section 25404.5(b)(1), allows the Secretary to cover the necessary and reasonable costs of all State agencies carrying out their responsibilities under the Unified Program, eligible State agencies now include: the California Environmental Protection Agency (Cal/EPA), State Water Resources Control Board (SWRCB), the Governor's Office of Emergency Services (OES), the Office of the State Fire Marshall (OSFM) and the Department of Toxic Substances Control (DTSC).

The Secretary is also responsible for amending the Title 27 regulations based on current needs of the Unified Program and to conform the Title 27 regulations to the provisions contained in newly enacted legislation (AB 2872). Although the Secretary adopted emergency regulations (R-00-06) on November 1, 2000, to make the Title 27 regulations (CCR) consistent with the provisions of AB 2872, those regulations lapsed on March 1, 2001. However, because the Title 27 regulations were once again inconsistent with AB 2872 provisions, the Secretary adopted emergency regulations (R-00-06) on March 8, 2001. The emergency regulations allow the Secretary to set the State surcharge so that it covers the necessary and reasonable costs of all State agencies implementing the Unified Program. The Secretary is further allowed to annually review the State surcharge rates and revise them, if necessary, but no more than once per year.

Prior to the adoption of AB 2872 and subsequent emergency regulations, the Secretary was required to establish the preliminary State surcharge no later than March 1, and the final surcharge no later than September 30 each year in the Z-Register. Under the emergency regulations, the Secretary is now required to publish revisions to the State surcharge in the Z-Register for a 30 day comment period. After receiving comments, the final surcharge rates are published in the Z-Register. The State surcharge becomes effective 60 days after its publication.

This rulemaking is needed to eliminate the preliminary and final surcharge and provide the Secretary with the authority to establish and adopt the State surcharge when needed, rather than by specified dates, and no more than once per year. It also proposes to define the term "service charge" to mean "surcharge" since both terms have the same meaning and are used interchangeably.

CUPAs' Responsibilities Regarding the State Surcharge:

The CUPAs are required to institute a single fee system which includes an assessment of a State surcharge on each regulated person (business) under the Unified Program. They are also required to: (1) Show the State surcharge as a separate item or items within the single fee billing; (2) Implement procedures (as specified in Title 27, CCR, section 15250(a)) to ensure collection of the State surcharge; (3) Bill and collect the State surcharge within their first billing cycle or within twelve months after the effective date of certification, whichever is shorter. The full State surcharge must be assessed within twelve months of the effective date of certification and every twelve months thereafter. The CUPAs must transmit all collected State surcharge revenues to the Secretary quarterly, within 30 days of the end of each State fiscal quarter.

EFFORT TO AVOID DUPLICATION OR CONFLICTS WITH FEDERAL REGULATIONS

There is no consolidated set of federal standards or regulations similar to the surcharge program.

STUDIES RELIED ON

A Notice of Exemption was prepared to illustrate that there is no significant effect on the environment. No other studies were relied upon because this rulemaking only establishes an administrative process for setting the State surcharge. Specifically, this rulemaking makes the Title 27, (CCR) consistent with recently enacted legislation (AB 2872).

ALTERNATIVES CONSIDERED

No workshops were held since the rulemaking is not considered complex or involving a large numbers of proposals that cannot easily be reviewed during the public comment period. Since the proposed regulations would have no impact on small business, no alternatives were considered.

DETAILED STATEMENT OF REASONS/NONCONTROLLING PLAIN ENGLISH SUMMARY

Add section 15110(a)(6): This paragraph is being added to define the term service charge to mean surcharge. This is necessary because it establishes the term service

charge in Title 27 regulations and allows the Secretary and other agencies to use the terms surcharge and service charge interchangeably.

Amend section 15240(a)(1): This paragraph is being amended to include the phrase "Division 20." This is necessary because it will identify the specific division of the Health and Safety Code used in establishing these regulations.

Amend section 15240(a)(2): This paragraph is being amended to include the phrase "Division 20." This is necessary for the same reason as above. Also, the word "annually"; the phrase "but not later than February 1"; and the phrase "for the upcoming fiscal year" are all being deleted because they are not necessary and are inconsistent with statute and the intent of this rulemaking.

Amend section 15240(a)(3): This paragraph is being amended to include the phrase "but are not limited to." This is necessary because it clarifies that the surcharge may include other costs. Also, the removal of the "comma" only represents a grammatical change. It is a change without regulatory effect.

Amend section 15240(b): This subdivision is being amended to delete the phrase "adopt a schedule for" and instead, add the word "review" and the phrase ",and revise if necessary," the State surcharge to be assessed on regulated "person." The word "person" is added in place of "business" so that the regulations are consistent with the statutes. Also, the phrase "The surcharge shall not be revised more than once per year." is being added to clarify that the Secretary will not establish the surcharge more than once each year. The phrase "Multiple subsection of the definition," is being deleted and instead, the word "person" and the phrase "more than one category" are being added. These changes are necessary because they clarify when and how the surcharge will be reviewed and revised.

Amend section 15240(c): This subdivision is being amended to eliminate the methods for calculating each surcharge component. This amendment is necessary to conform the regulations to AB 2872 (Chapter 144, Statutes of 2000), specifically HSC section 25404.5(b), which provides the Secretary with the authority to expend the State surcharge funds to cover the necessary and reasonable costs of all State agencies implementing the Unified Program, rather than allocating the funds to only specified agencies and their Unified Program activities.

Amend section 15240(e): This subdivision is being amended to eliminate the tentative (preliminary) and the final State surcharges and instead, require the Secretary to publish amendments to the State surcharge and to accept comments for 30 days. This is necessary because it provides the CUPAs and the persons (businesses) subject to these requirements with an opportunity to comments on the proposed surcharge.

Add section 15240(f): This subdivision is being added to require the Secretary to publish the final surcharge in the Z-Register after receiving comments. This is necessary to clarify when and where the surcharge will published.

Add section 15240(g): This subdivision is being added to require the surcharge to become effective 60 days after being published in the Z-Register. The CUPAs will be responsible for collecting the new surcharge as part of their single fee system. It will also allow the Secretary to establish and adopt the State surcharge when needed, but no more than once per year. The CUPAs will be required to use the State surcharge that is in effect at the time of the CUPAs' billing. This is necessary to clarify when the surcharge will become effective.

How to read these regulatory changes:

The text of the affected regulations that has not been changed by the emergency rulemaking adopted March 8, 2001 or this rulemaking is printed in plain text: APlain text.®

Text deleted from the original text of the regulations by the emergency rulemaking adopted November 1, 2000 is indicated by strikeout text: AStrikeout.®

Text added by the emergency rulemaking adopted November 1, 2000 is indicated by underlined text: AUnderline text.®

Text added by this rulemaking is indicated by double underline text: ADouble Underline text.®